

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/733,658
Filing Date: 12/11/2003
Applicant(s): Eric J. Burkart, James Patrick Galvin Jr., Brian L. Pulito
Entitled: POLICY DRIVEN ONLINE MEETING UPDATES
Examiner: Andrea Natae Long
Group Art Unit: 2176
Attorney Docket No.: LOT920030032US1 (7321-017U)

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
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Sir:

This Reply Brief is submitted under 37 C.F.R. § 41.41 in response to the EXAMINER'S ANSWER dated June 6, 2008.

The Examiner's response to Appellant's arguments submitted in the Appeal Brief of April 7, 2008, raises additional issues and underscores the factual and legal shortcomings in the Examiner's rejection. In response, Appellant relies upon the arguments presented in the Appeal Brief of April 7, 2008, and the arguments set forth below.

In response to the arguments presented on pages 6 through 8 of the Appeal Brief in which Appellants asserted that "Schodi wholly lacks any teaching to the prioritization of groups of

participants to a Web conference--only the prioritization of data packets which may or may not be part of a Web conference", the Examiner asserted the following on page 16 of the Examiner's Answer.

It is first noted that Schrodi is used to disclose prioritization of data traffic within a service such as a web conference or other multimedia application. On page 4, paragraph [0046], Schrodi initially discloses that his uses of prioritizing data can be used analogously for all services for which a prioritization of the data traffic is needed, such as Web conferences. A web conference is defined as a meeting of two or more persons/groups for discussing matters of common concern, using World Wide Web technologies to share information. **The mere mentioning of Web conferencing allows one skilled in the art to implement the method of prioritization of data in such a system.**

Thus, Examiner concedes that there is no direct teaching in Schrodi that relates to the "assigning" of a relative priority for each group of participants to a Web conference as expressly recited in claims 1, 7 and 13. Rather, Examiner argues (and Appellants) agree that Schrodi only explicitly teaches the assignment of a priority of data traffic which is not the same as "a group of participants to a Web conference".

On page 16 of the Examiner's answer, Examiner attempts to cure the deficiencies of Schrodi in reference to paragraph [0014] of Hinchliffe which admittedly teaches the grouping of destination computers and an assignment of a priority to the destination computers. In part, the reference to paragraph [0014] of Hinchliffe reads,

the overall operation can be improved by breaking the **destination computers down into groups, each with an associated priority**, and then sending the updated data to the respective groups in accordance with their priority level. Breaking the job down into groups of computers reduces the peak network traffic in a way that can assist in avoiding malfunctions and excessively slow operation.

Thus, Hinchliffe only provides a teaching to grouping computers and not grouping "participants to a Web conference" as directly claimed by Appellants. Examiner through argument only

without evidentiary support attempts to fill the vast gap between the combination of Schrodi and Hinchliffe in reasoning,

It is reasonable for one skilled in the art to conclude that the groups of computers include some form of user participation, especially if taken in combination with the teachings of Schrodi. **Hinchliffe teaching of grouping computers by priority essentially teaches assigning priority to multiple groups of participants.** The assignment of priority to the groups creates a relative priority for each group with respect to all other groups, wherein the priority for each group specifies when the group will receive a data update. Moreover, Schrodi, Hinchliffe and the Appellants invention all seek to provide a more efficient method of sending data to computers.

Hence, Examiner has asserted the presence of an integral teaching of Appellants' claims without a shred of evidence to support the same. Additionally, the assignment of a relative priority as set forth in Appellants' claims remains unfounded in the combination of Schrodi and Hinchliffe as admitted by Examiner. Yet, again, Examiner prefers to fill the gaps with Examiner's own unsupported reasoning.

As set forth in M.P.E.P. 2142 "Legal Concept of Prima Facie Case of Obviousness", to reach a proper determination under 35 U.S.C. 103...in view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. In particular, knowledge of applicant's disclosure must be put aside in reaching this determination. Further, the tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art. In the instant case, Examiner has produced Examiner's own "facts" without regard to the direct teachings of the prior art references cited.

In response to the arguments presented on pages 8 through 9 of the Appeal Brief in which Appellants asserted that "Mukherjee wholly lacks any teaching to the random selection of a group of participants", the Examiner asserted the following on page 18 of the Examiner's Answer.

The claim language, as currently recited, does **not** require the participants to be randomly selected and *subsequently* placed into groups. Additionally, the specification does not particularly indicate that user are selected randomly and then placed into groups. The language of the specification, which was intentionally written by Appellant in this manner, leaves open the possibility of interpreting the claim language either way...Mukherjee teaches the Examiner's interpretation of the claim, in light of the Appellant's specification, by teaching that groups of participants are "arbitrarily" (equivalent to "random") connected to the servers (page 6 paragraph [0061] of Mukherjee).

Though Examiner initially argued in the Final Office Action of September 21, 2007 that Mukherjee did "not explicitly stat[ing] the word "random", Examiner now asserts that the teaching of a random selection of a group of participants is present in Mukherjee. Further, Examiner misinterprets Appellants' arguments in the Appeal Brief by somehow interjecting an argument not established by Appellants--namely that "participants are randomly selected and placed into a first group".

For the sake of clarity, claim 1 as presented includes three limitations, the second of which reads,

selecting at random a first group of participants from the plurality of participants, the first group having a pre-configured maximum number of participants;

Based upon the limitation presented, Appellants see no confusion or inference that participants are first randomly selected and then placed into a group. Rather, the claim language is plain on its face: a first group of participants are selected at random from a multiplicity of participants such that the first group has a pre-configured maximum number of participants.

In any event, Examiner still relies exclusively upon paragraph [0061] of Mukherjee for the teaching of "selecting at random a first group of participants from the plurality of

participants, the first group having a pre-configured maximum number of participants". A complete reproduction of paragraph [0061] is reproduced herein for the convenience of the Honorable Board:

[0061] Referring to configurations using a plurality of servers (e.g., servers 26 of FIG. 2), individual participants 24 are distributed amongst different servers 26 with individual participants 24 connecting to a single one of the servers 26 in the exemplary embodiment. Referring to FIGS. 12 and 13, an exemplary fully interconnected collaboration infrastructure 20a for a collaboration session 12a and an exemplary peer-to-peer collaboration infrastructure 20b comprising a plurality of servers 28 for a collaboration session 14 are respectively illustrated. FIGS. 12 and 13 depict exemplary collaboration sessions 12a, 14 individually including three respective servers 26, 28 (S.sub.1, S.sub.2 and S.sub.3) and running distributed organizer processes to conduct communications intermediate three groups of participants 24 (groups are indicated by P1, P2 and P3). **The participants 24 are arbitrarily connected to the servers 26, 28 of the respective collaboration sessions 12a, 14.** In exemplary arrangements, the organizer components in individual servers 26, 28 have knowledge of the actual network-topologies of the respective collaboration infrastructures 20a, 20b in order to route messages appropriately.

Thus, it will be plainly clear from the bolded portion of paragraph [0061] that participants are "arbitrarily connected" to servers. This is not the same as the claimed, "selecting at random a first group of participants from the plurality of participants, the first group having a pre-configured maximum number of participants". Thus, despite Examiner's confusion as the proper construction of Appellants' claim language, the fact remains that Mukherjee does not support Examiner's argument that the limitation "selecting at random a first group of participants from the plurality of participants, the first group having a pre-configured maximum number of participants" is present in Mukherjee.

In response to the arguments presented on pages 9 through 10 of the Appeal Brief in which Appellants asserted that "Mukherjee wholly lacks any teaching to the inducement of individual e-meeting", the Examiner asserted the following on page 19 of the Examiner's Answer.

The meaning of inducing is "to cause". Appellant argues that the data updates are affirmatively determined first and then sent out to different computers according to a priority assigned to a computer. Two things should be addressed. First, Hinchliffe teaches wherein when an update is needed such as when an update is available and should be downloaded cause the source computer to push a data update (paragraph [0031]). Second by assigning priority levels to the groups influences the transmission or updates. Having priority levels to the groups provides information to the system as to which group will receive an update at a determined time which, provides for the influence or stimulation of an update.

Again, Examiner inserts arguments unsupported by facts within the cited prior art references. Rather, Examiner refers only to paragraph [0031] of Hinchliffe when admitting that Hinchliffe only provides a teaching that updates are provided when available. Thereafter, Examiner attempts to bootstrap the basic idea of providing updates to Appellants' claimed "inducing individual e-meeting updaes at different times for different selections of e-meeting participants" through pure argumentation without factual support in any of the references.

In this regard, Examiner, persists in arguing that somehow there is a teaching present in the ether that priority levels are assigned to groups of participants to a Web conference--an argument that remains unsupported with any recitation to any portion of any the cited prior art references in contravention of the most basic obligation of the Examiner to map specifically recited claim elements to specific portions of a reference as set forth in 37 C.F.R. 1.104(c)(2). The fact remains, the combination of Mukherjee and Hinchliffe fail to provide a teaching of "(1) inducing individual e-meeting updates (2) at different times (3) for different selections (4) of e-meeting participants."

For the reasons set forth in the Appeal Brief, and for those set forth herein, Appellants respectfully solicit the Honorable Board to reverse the Examiner's rejection under 35 U.S.C. §§ 102 and 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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